

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action No. 97-1442-DRD

V.

TROPICAL FRUIT, S.P.;  
AVSHALOM LUBIN;  
CESAR OTERO ACEVEDO; and  
PEDRO TOLEDO GONZALEZ,

Defendants.

### DECLARATION OF JAIME LOPEZ

I, Jaime Lopez, declare under penalty of perjury, in accordance with 28 U.S.C. § 1746 as follows:

1. I make this Declaration based upon my personal knowledge including my review of the Consent Decree in this action, my inspections of the Tropical Fruit farm (“Farm”), and consultation with other employees of the Environmental Protection Agency (“EPA”). .

2. I am presently employed as an Environmental Scientist at the Environmental Protection Agency ("EPA") Region 2, Caribbean Environmental Protection Division, Enforcement and Superfund Branch in San Juan, Puerto Rico. I have held this position since August 2, 1998. Prior to my employment at EPA, I was employed by the Puerto Rico

Environmental Quality Board from 1996 until 1998 as an Environmental Specialist.

3. I received a Bachelor of Science degree in Biology in 1990 from Kansas State University.

4. I have been certified as an EPA inspector by completing the following courses and receiving the following certifications: Basic Inspector, NPDES Inspector and Superfund Site Assessment Inspector.

5. I have inspected the Farm on approximately 20 occasions. The first inspection of the Farm in which I was involved was in 1997 while I was still employed by PREQB. The most recent inspections in which I was involved took place on March 8, 2004 and October 26, 2004.

6. I have reviewed the terms of the Consent Decree in this action entered by this Court on October 25, 2001.

7. Based on my inspections, my review of documents associated with the Farm, and consultation with other EPA employees, I am familiar with the physical layout of the farm, and specifically the portions of the Farm that border the Guayanilla community on the West and North. The outer edge of the Farm bordering Guayanilla is known as the "Buffer Zone Perimeter." The Buffer Zone Perimeter is further divided into six "Buffer Zone Segments," known as Buffer Zone Segments A-F. Each of the six Buffer Zone Segments have associated "No-Spray Zones" in which certain specific requirements of the Consent Decree apply. I am familiar with these specific requirements.

#### **Vegetative Barrier**

8. As of Oct. 25, 2004, the Farm had not grown neem trees to a height of thirty feet

along the entire length of Buffer Zone Segment A in the Outer Vegetative Barrier. During my inspection of Oct. 26, 2004, I took the attached photographs (Attachment 1, Photolog photographs 23 to 25) of Buffer Zone Segment A.

9. As of Oct. 25, 2004, the Farm had not grown neem trees to a height of thirty feet along the entire length of Buffer Zone Segment A in the Inner Vegetative Barrier. During my inspection of Oct. 26, 2004, I took the attached photographs (Attachment 1, Photolog photographs 23 to 25) of Buffer Zone Segment A.

10. As of Oct. 25, 2004, the Farm had not grown neem trees to a height of thirty feet along the entire length of Buffer Zone Segment B in the Outer Vegetative Barrier. During my inspection of Oct. 26, 2004, I took the attached photographs (Attachment 1, Photolog photographs 22 and 26) of Buffer Zone Segment B.

11. As of Oct. 25, 2004, the Farm had not grown neem trees to a height of thirty feet along the entire length of Buffer Zone Segment C in the Outer Vegetative Barrier. During my inspection of Oct. 26, 2004, I took the attached photographs (Attachment 1, Photolog photographs 17 to 20) of Buffer Zone Segment C.

12. As of Oct. 25, 2004, the Farm had not grown neem trees to a height of thirty feet along the entire length of Buffer Zone Segment D in the Outer Vegetative Barrier. During my inspection of Oct. 26, 2004, I took the attached photographs (Attachment 1, Photolog photographs 4, 5 and 8) of Buffer Zone Segment D.

13. As of Oct. 25, 2004, the Farm had not grown neem trees to a height of thirty feet along the entire length of Buffer Zone Segment D in the Inner Vegetative Barrier. During my inspection of Oct. 26, 2004, I took the attached photographs (Attachment 1, Photolog

photographs 8, 11, 12 and 16) of Buffer Zone Segment D.

14. During my inspection of Oct. 26, 2004, I observed that the Farm had not grown neem trees to a height of thirty feet along the entire length of Buffer Zone Segment E in the Outer Vegetative Barrier.

15. Within some portions of some Buffer Zone Segments, the Farm had grown neem trees to a height of thirty feet. During my inspection of Oct. 26, 2004, I took photographs showing neem trees that had attained the height of approximately thirty feet. See Attachment 1, Photolog photographs 1 to 6 and 11.

16. Drip irrigation is not in place to water all the neem trees that are to constitute the Vegetative Barrier(s).

#### **Relocation/Removal of Mango & Banana Trees Within Buffer Zone**

17. As of Oct. 25, 2004, the Farm had not removed any mango trees from the 173 foot wide No-Spray Zone of Buffer Zone Segment A. During my inspection of Oct. 26, 2004, I took the attached photograph (Attachment 1, Photolog photograph 24 ) of mango trees within Buffer Zone Segment A.

18. As of Oct. 25, 2004, the Farm had not removed any mango trees from the 75 foot wide No-Spray Zone of Buffer Zone Segment B. During my inspection of Oct. 26, 2004, I took the attached photograph (Attachment 1, Photolog photograph 21) of mango trees within Buffer Zone Segment B.

19. As of Oct. 25, 2004, the Farm had removed virtually no mango trees from the 50 foot wide No-Spray Zone of Buffer Zone Segment C. During my inspection of Oct. 26, 2004, I

took the attached photographs (Attachment 1, Photolog photographs 17 and 20) of mango trees within Buffer Zone Segment C.

20. As of Oct. 25, 2004, the Farm had removed virtually no mango trees from the 173 foot wide No-Spray Zone of Buffer Zone Segment D. During my inspection of Oct. 26, 2004, I took the attached photographs (Attachment 1, Photolog photographs 6, 7, 9, 10, 11, 12, 14 and 15) of mango trees within Buffer Zone Segment D.

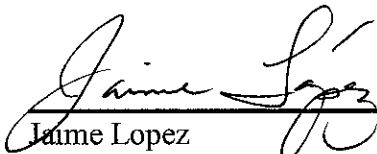
21. As of Oct. 26, 2004, the Farm had not removed all banana trees from the 50 foot wide No-Spray Zone of Buffer Zone Segment E.

22. As of Oct. 26, 2004, the Farm had not removed all the banana trees from the 125 foot wide No-Spray Zone of Buffer Zone Segment F.

23. To the best of my knowledge, as of Oct. 26, 2004, the only mango or banana trees that the Farm had removed within the No-Spray Zones of Buffer Zone Segments A-F were a few dozen mango trees at the very outer edge of the planted area of the Farm. (Attachment 1, Photolog photographs 7,9,10,14, and 15).

24. As of Oct. 26, 2004, the Farm had not planted any plantains in the No-Spray Zones of Buffer Zone Segments A-F.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. This declaration was executed on the 10<sup>th</sup> day of November, 2004.

  
Jaime Lopez  
Environmental Scientist  
Caribbean Environmental Protection Div.  
Region II  
Environmental Protection Agency

# Attachment 1

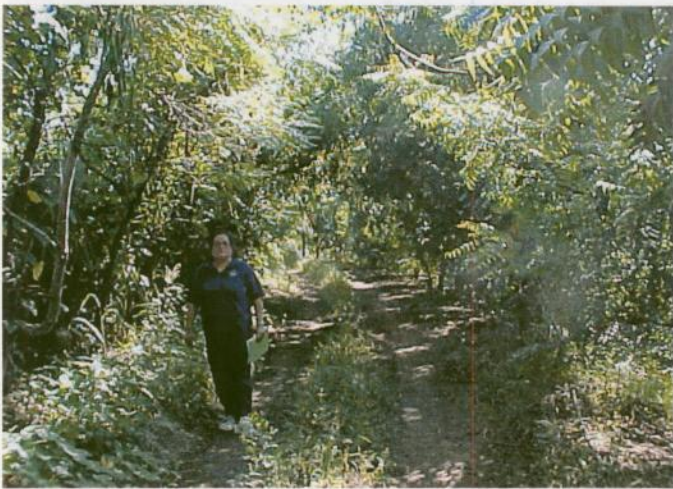




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